



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant(s):

Morton and Osterson

Application No.: 10/733,030

Filed: 12/11/2003

Title: Identity Preserved Container

Attorney Docket No.: 5737700/25422

Art Unit:

3617

Examiner:

Robert J. McCarry, Jr.

APPEAL BRIEF

This is an appeal from the final rejection of the Examiner dated August 8, 2005, finally rejecting all of the pending claims of the application. The requisite fee set forth in Rule 1.17 accompanies this Brief.

Real Party in Interest

William Morton and James Osterson are the owners of patent application number 10/733,030.

Related Appeals and Interferences

There are no other appeals or interferences known to Appellants or the Appellants' legal representative that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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Status of Claims

The application was filed December 11, 2003. Claims 1-22 and 24-25 are pending and finally rejected. Claims 23, 26 and 27 were canceled. An amendment filed on January 6, 2006, added claims 28 and 29, which were previously rejected in Office Actions dated February 24, 2005 and August 8, 2005 respectively. Appellant is appealing the rejections of all pending claims.

Status of Amendments

An amendment after final was filed on August 30, 2005, canceling claims 26 and 27. Another amendment after final was filed on January 6, 2006, amending claim 24 and adding claims 28 and 29.

Summary of Claimed Subject Matter

The present invention relates to an identity preserved ("IP") container for transportation, storage, and segregation of flowable cargo. In particular, the invention is a standardized shipping container suited for IP grains that has overcome the product mixing problems of traditional grain distribution methods that make IP movement impossible. The invention is a top loading, bottom unloading, transportation device that preserves the identity of the product or substance transported. This invention circumvents both the loading and unloading problems associated with the use of conventional standardized containers for flowable cargo, as well as the cleaning and decontamination problems with these same containers.

As shown below in Figure 1 of the present application, the current invention has a frame supporting an enclosure with a top 20, a bottom 12, sidewalls 14, a front wall 18, and a back wall

16. As illustrated below in Figure 6 of the present application, a liner comprised of side panels 24 and funnel panels 22 is secured to the interior of the enclosure. As shown below in Figure 8 of the present application, the liner is supported by a plurality of steel plate support panels 65, which are fastened to the underside of the funnel panels 22. The support panels are supported by rails 66 which are supported by posts 25. The liner terminates in a centrally located opening in the bottom of the enclosure 12. A belly door is located in the opening in the bottom of the enclosure 12 wherein the belly door moves between a closed and an open position.

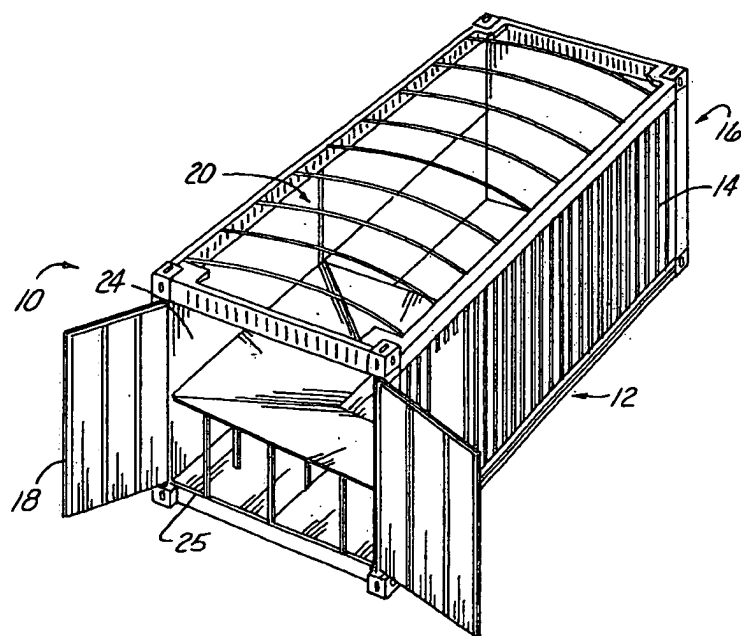


Fig. 1

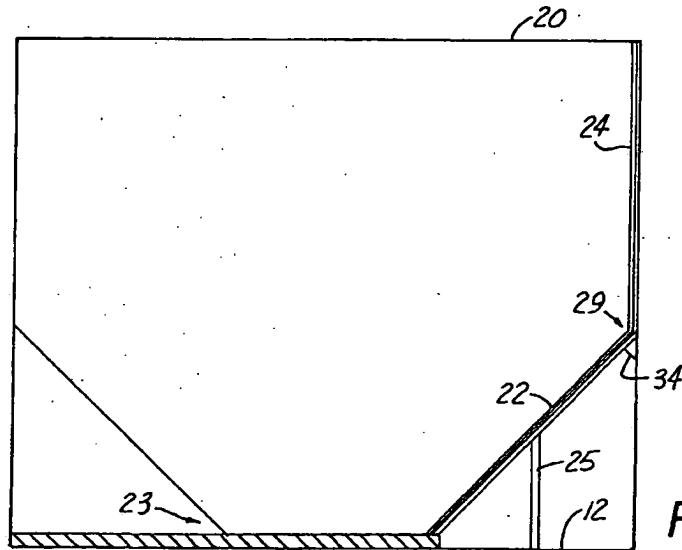


Fig. 6

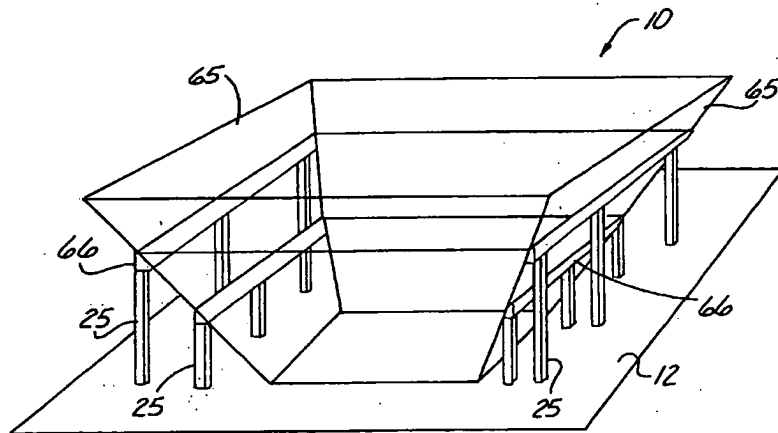


Fig. 8

Grounds of Rejection to be reviewed on Appeal

The Examiner rejected claims 1-3, 5-8, 19-21, and 24-25 under 35 U.S.C. §102(b) in view of United States Patent No. 5,312,162 (Baebel), and claims 28 and 29 under 35 U.S.C. § 102(b) in view of Baebel.

Grouping of Claims

As to the rejections applied against claims 1-22, 24-25, and 28-29, the following groupings of claims stand or fall together based on the corresponding arguments:

1. Claims 1-22, 24-25, and 28-29
2. Claims 1-22, 24-25, and 29
3. Claims 1-22, 24-25, and 29
4. Claims 24-25

Argument

The Examiner has rejected claims 1-22, 24-25, and 28-29 under 35 U.S.C. § 102(b) as containing subject matter that was previously patented in this country more than one year prior to the date of application in the United States. Specifically, the Examiner finds the invention to be unpatentable over the Baebel reference. Applicant respectfully traverses the Examiner's rejection based on four separate arguments corresponding to the grouping of the claims. Each argument is presented below in turn.

1. The Examiner erred in rejecting claims 1-22, 24-25, and 28-29 because the cited reference fails to disclose a frame as required by the claimed invention.

As stated above, the 102(b) rejection is based on the Baebel reference that discloses an improved particulate handler. This improved particulate handler is a vessel with a plurality of overlapping sheets bolted to the enclosure so as to form a liner.

Claims 1, 28, and 29 recite the following limitations: "a frame supporting an enclosure with a top, bottom, side walls, front wall, and a back wall"; and "a liner secured to an interior of said enclosure". The Examiner stated with regard to these limitations that, "Baebel discloses a

container for carrying flowable cargo comprised of a frame supporting an enclosure having a top section, a bottom, side walls, a front wall and a back wall.” (Feb. 24, 2005 Office Action, p. 2; Aug. 8, 2005 Office Action, p. 2). We respectfully submit that the Examiner erred in this regard, because Baebel does not have a frame separate from the enclosure and the liner.

Claims 1, 28, and 29 of the claimed invention require three separate components: a frame, an enclosure supported by the frame, and a liner secured to the interior of the enclosure. As shown below in figures 1 and 6 of the present application, the frame is comprised of a plurality of perimeter support beams defining a rectangular three-dimensional box. The enclosure 10 of the claimed invention includes a top 20, a bottom 12, side walls 14, a front wall 18, and a back wall 16, which is structurally supported by the surrounding frame. The liner inside the enclosure is composed of side panels 24 and funnel panels 22 (see Figure 6).

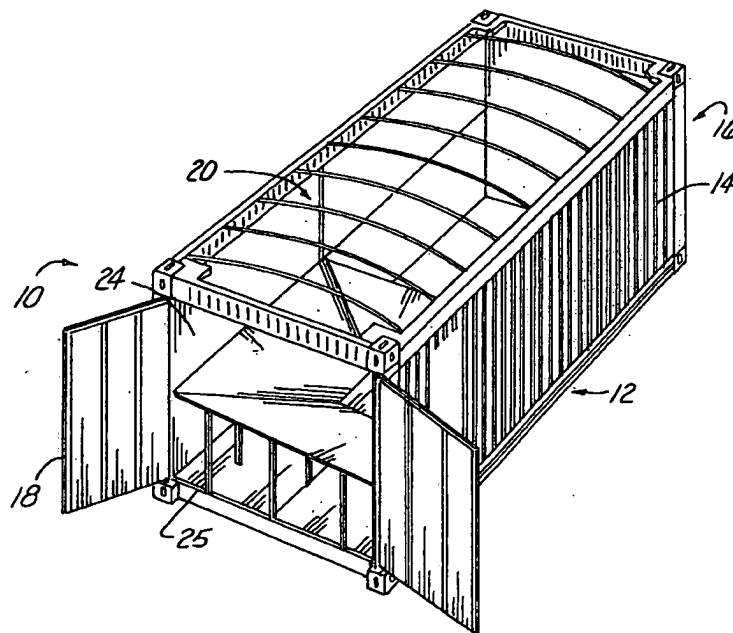


Fig. 1

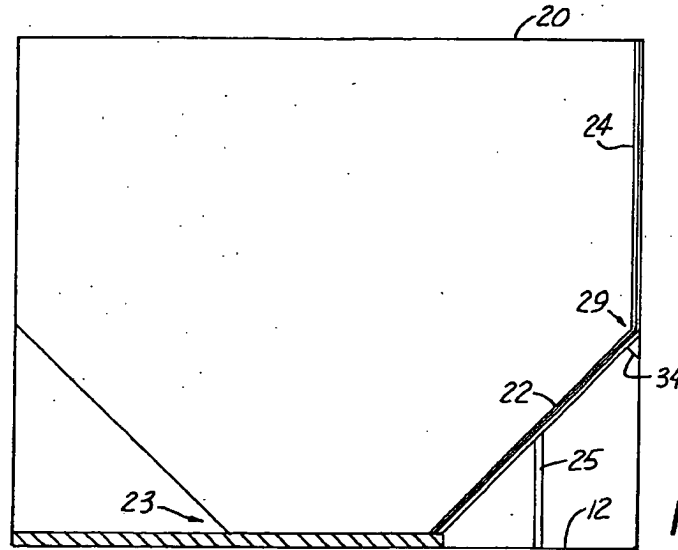
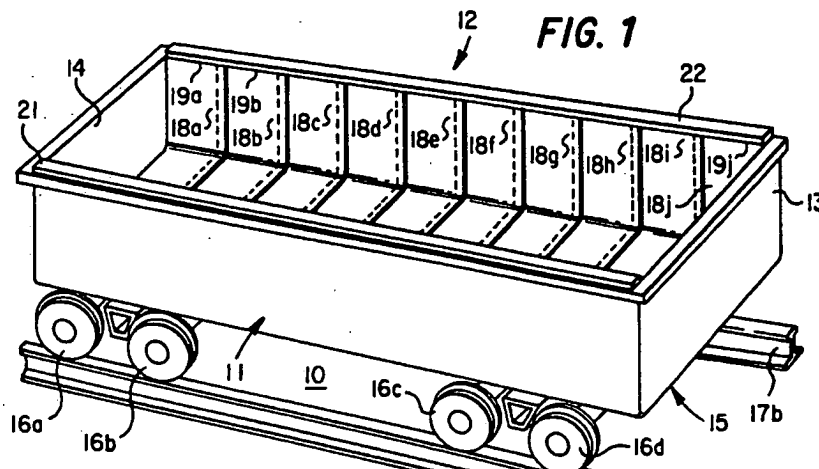


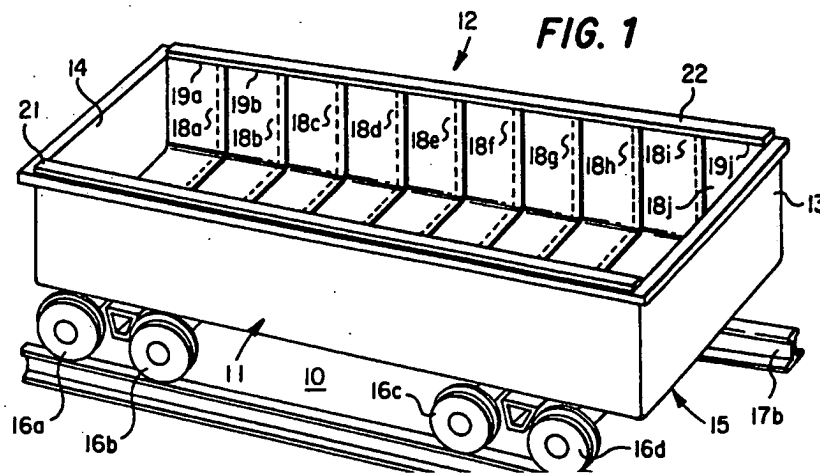
Fig. 6

The Baebel reference at best discloses an enclosure and a liner, but it fails to disclose a frame separate from the enclosure. As shown below in Figure 1 of Baebel, Baebel discloses a railroad type car having a front wall 11, a back wall 12, side walls 13-14, and a bottom 15, with a plurality of overlapping sheets 18a-18j bolted to the interior of the enclosure.



At best Baebel has adequate components to form an enclosure, but this enclosure is not supported by a frame. It should be noted that the Examiner identified the top surfaces of the sidewalls (presumably components 21 and 22) as forming the top of the enclosure. (Feb. 24, 2005 Office Action, p. 2; Aug. 8, 2005 Office Action, p. 2). Of course, these components cannot

also form the frame. Additionally, Baebel states that these components are merely horizontal longitudinally disposed plates for sandwiching the end portions of the sheets to the top sections of the transport vessel (Col. 5, lines 41-52), which calls into question whether these components can even be considered a top let alone part of a frame providing structural support to the enclosure. Baebel lacks any disclosure of a structural frame for supporting an enclosure either in the form of vertical support beams or horizontal support beams along the top, side, or bottom of the enclosure. Baebel does not include a frame, and therefore fails to include all elements of claim 1 of the present invention.



Accordingly, based on the foregoing it is stated that the prior art cited by the Examiner does not anticipate the claimed invention and the Board should reverse the Examiner's refusal to register claim 1-22, 24-25, and 28-29 under 35 U.S.C. § 102(b).

2. The Examiner erred in rejecting claims 1-22, 24-25, and 29 because the cited reference fails to disclose support panels as required by the claimed invention.

As stated above, the 102(b) rejection is based on Baebel, which discloses an improved particulate handler. The improved particulate handler disclosed is a vessel with a plurality of sheets bolted to the enclosure so as to form a liner.

Claims 1 and 29 recite the following limitation “a plurality of support panels”. Baebel does not disclose this aspect of the claimed invention.

Figure 8 of the present application shows the support structure underlying the funnel panels of the liner. The support panels 65 conform in shape to the funnel panels, which secure to the underside of the funnel panels.

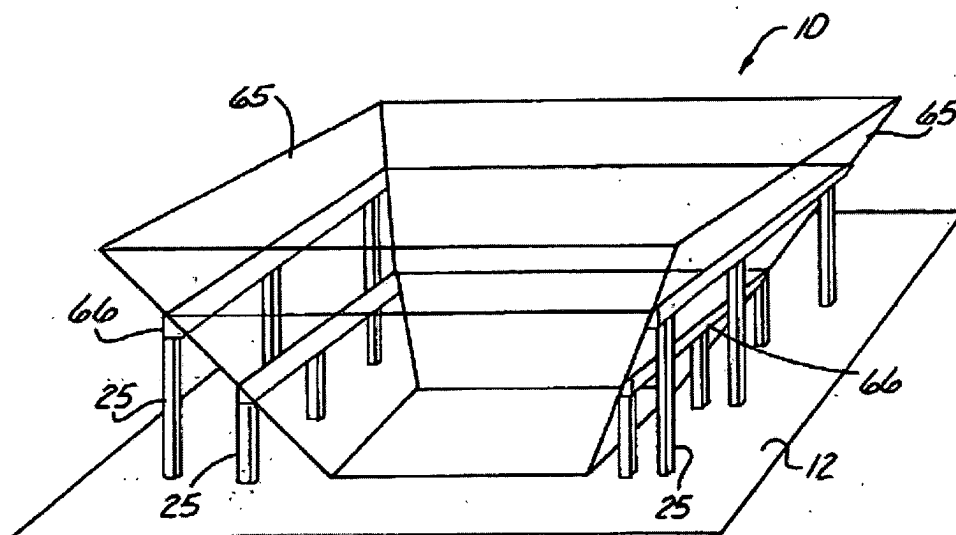


Fig. 8

In the Office Actions dated February 24, 2005 and August 8, 2005, the Examiner stated the following with regard to this limitation, “A reinforcement rail on the underside of the container supports the funnel panels. This rail is shown in figures 17 and 18 between the door

openings". (Feb. 24, 2005 Office Action, p. 2; Aug. 8, 2005 Office Action, p. 2). Presumably, this statement means that the Examiner believes that the bottom of the enclosure 15 (See Figure 1 of Baebel) meets the support panel limitation by providing support for funnel panels 91a-91d (See Figure 17 of Baebel).

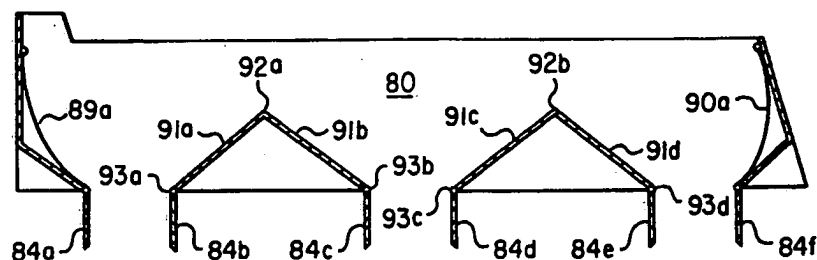
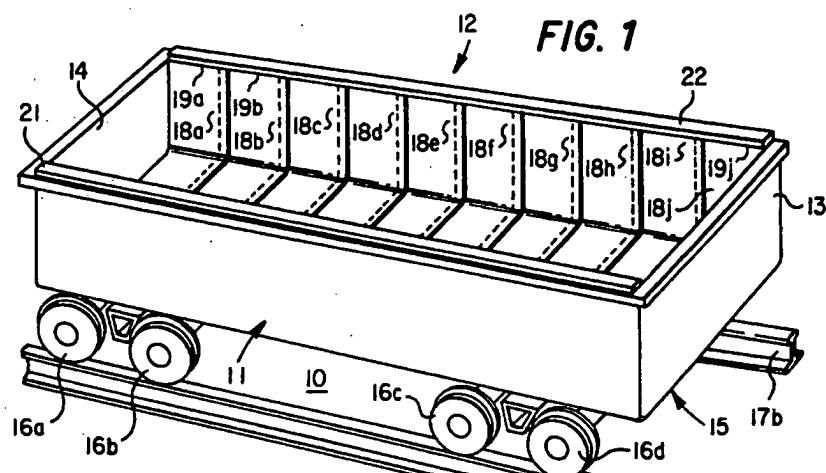


FIG. 17

Baebel does not disclose the claimed invention because it fails to disclose support panels as required by the claimed invention. The support mechanism of Baebel cited by the Examiner is merely the bottom of the container. Claims 1 and 29 of the claimed invention require support panels that are separate from the bottom of the enclosure. The claimed invention requires both a

plurality of support panels in addition to a bottom of the enclosure. The two limitations cannot be met by the same structural component.

If this were the case, then there would be no distinction between claim 28 (which does not include the support panel limitation) and claims 1 and 29 (which do include the support panel limitation). Principles of claim differentiation require that limitations in claims be given meaning, and the Examiner's interpretation gives no meaning to the support panel limitation in claims 1 and 29. Rather, the Examiner reads the limitation out of the claim entirely.

Accordingly, based on the foregoing it is stated that the prior art cited by the Examiner does not anticipate the claimed invention and the Board should reverse the Examiner's refusal to register claims 1-22, 24-25 and 29 under 35 U.S.C. § 102(b).

3. The Examiner erred in rejecting claims 1-22, 24-25, and 29 because the cited reference fails to disclose a plurality of support panels reinforcingly secured to the liner as required by the claimed invention.

As stated above, the 102(b) rejection is based on Baebel, which discloses an improved particulate handler. The improved particulate handler disclosed is a vessel with a plurality of overlapping sheets bolted to the enclosure so as to form a liner.

Claims 1 and 29 recite the following limitation "a plurality of support panels reinforcingly secured to the underside of said funnel panels". Baebel does not disclose this aspect of the claimed invention.

As shown in Figure 8 of the present application, which shows the support structure underlying the funnel panels of the liner. The support panels 65 conform in shape to the funnel panels, and secure to the underside of the funnel panels.

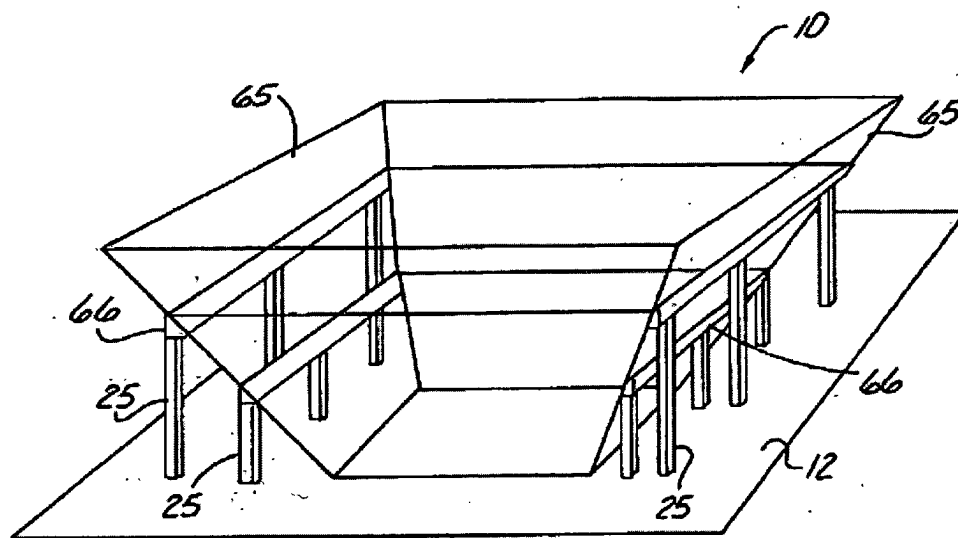


Fig. 8

In this manner, claims 1 and 29 require that the support panels be reinforcingly secured to the funnel panels. In the present application, steel support panels span the length of the funnel panels and are secured to the underside of the funnel panels to fasten, reinforce, and support these panels.

With regard to this limitation the Examiner stated in Office Actions dated February 24, 2005 and August 8, 2005, that the Examiner is relying on the bottom of the enclosure disclosed in Baebel for support for the support panel. Notwithstanding the foregoing argument, even if the Examiner is given the benefit of the doubt and allowed to call the bottom of the enclosure a support panel, the support panel is not reinforcingly attached to the funnel panels as required by the claimed invention. As show in Figure 17 of Baebel, the funnel panels are attached to the sidewalls and bottom of the enclosure (or support panel) only at terminal ends, with no additional reinforcement points within the enclosure. Without additional support secured to the underside of the funnel panels, the support panels are not reinforcingly attached to the funnel panels. At

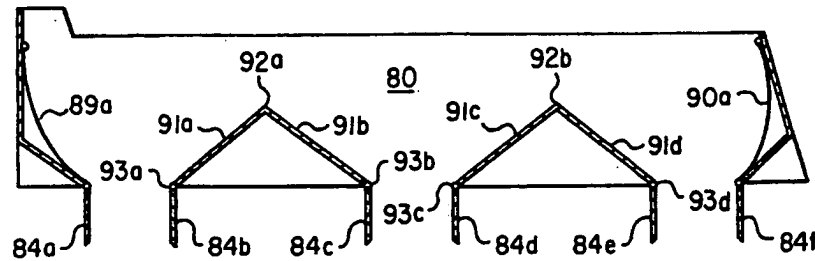


FIG. 17

best, the connection between the bottom of the Baebel enclosure and the funnel panels, meets the limitation of claim 1 that reads “a liner secured to an interior of said enclosure, comprising . . . funnel panels forming a bin terminating in a centrally located opening in said bottom of said enclosure”, but does not meet the limitation of support panels reinforcingly secured to the underside of the funnel panels.

The limitation of a support panel reinforcingly secured to the underside of the funnel panels is an entirely distinct limitation, which is not met by Baebel’s bottom panel. Baebel simply does not disclose support panels, and clearly does not disclose support panels in a configuration that reinforces the underside of the funnel panels.

Accordingly, based on the foregoing it is stated that the prior art cited by the Examiner does not anticipate the claimed invention and the Board should reverse the Examiner’s refusal to register claims 1-22 and 24-25 under 35 U.S.C. § 102(b).

4. The Examiner erred in rejecting claims 24-25 because the cited reference fails to disclose rails and/or posts to support the support panels.

As stated above, the 102(b) rejection is based on Baebel, which discloses an improved particulate handler. The improved particulate handler disclosed is a vessel with a plurality of overlapping sheets bolted to the enclosure so as to form a liner.

Claim 24 states the following limitation, “a plurality of rails connect to said support panels”. Claim 25 states the following limitation, “a plurality of posts secure the support panels to the bottom of the enclosure”. Referring to Figure 8 of the present application shown below, the rails 66 secure to the support panels 65 and posts 25 depend therefrom.

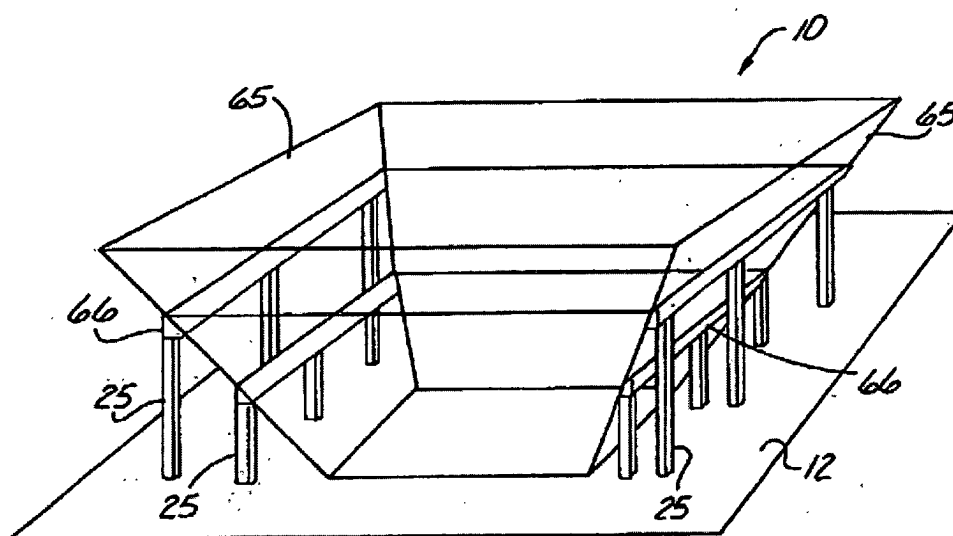
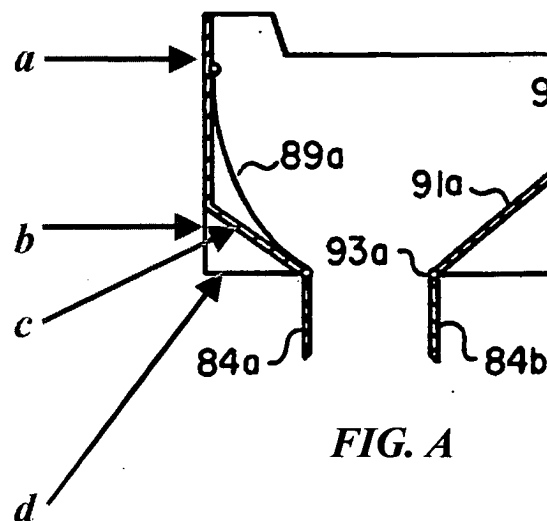


Fig. 8

With regard to these limitations the Examiner stated of Baebel “[t]he support plates and support rail are fitted between the structure of the vehicle and the liner, as shown in figure 17 at either end of the vehicle”. (Aug. 8, 2005 Office Action, p. 4). It is unclear what the Examiner is referring to as the support plate, support rail, and liner, because the Examiner failed to distinctly identify the components of the invention. There appear to be two possibilities. For ease of reference, a portion of Figure 17 of the Baebel patent is shown below in Figure A with references *a-d* and Figure B with references *e-i* added to identify portions of the structure believed to be

referenced by implication in Examiner's Office Action of August 8, 2005. The two possibilities will be discussed in turn below.

Figure A below represents the first possible interpretation of Baebel. This possibility is largely based on the Examiner's statements in the Office Actions dated February 24, 2005 and August 8, 2005 that identify components 91a-91d in Figure 17 of Baebel as funnel panels. (Feb. 24, 2005 Office Action, p. 2; August 8, 2005 Office Action, p. 2). Since these components were identified as funnel panels, this is interpreted to mean that component *c* in Figure A is also a funnel panel. Accordingly, if component *c* in Figure A is a funnel panel, component *a* must be a side panel, leaving components *b* and *d* as the enclosure side and enclosure bottom, respectively. All of these components are set forth as structural limitations in claim 1 from which claims 24-25 depend.



While the funnel panels *c*, side panels *a*, enclosure side *b* and enclosure bottom *d* identified above are all required for the claimed invention, the claimed invention also requires support panels, support rails, and posts. As previously argued by the Examiner, it may be that the Examiner believes that the support panels are identified by *d* in Figure A. Even setting aside

the fact that the support panel cannot also be the bottom of the enclosure, Figure A illustrates there are no other components in Baebel that could possibly be construed as rails or posts.

The second possible interpretation of the Examiner's comment about Baebel is described in reference to Figure B below. In Figure B, components *e* and *g* comprise the support panels, while component *i*/89a is both the side and funnel panels. Components *f* and *h* in Figure B represent the side and bottom of the enclosure, respectively. However, even if the Examiner correctly classified component *e*, *g*, and *i*, there are still no posts or rails, rendering this interpretation flawed as well.

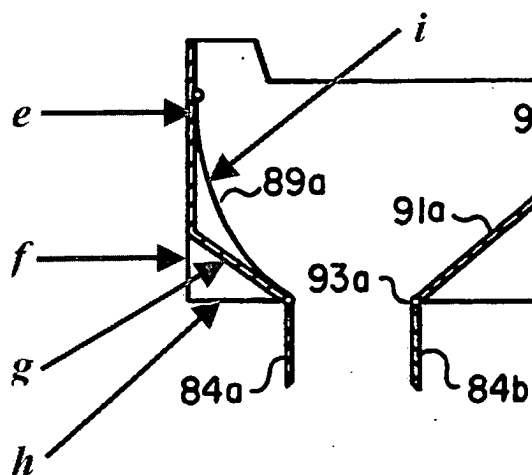


FIG. B

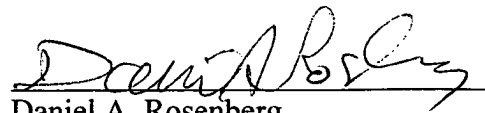
Accordingly, based on the foregoing it is stated that the prior art cited by the Examiner does not anticipate the claimed invention and the Board should reverse the Examiner's refusal to register Claims 24 and 25 under 35 U.S.C. § 102(b).

Closing

Appellants respectfully request that the Board grant the claims as provided in the Appendix.

Respectfully submitted,

Date: 2-7-06



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ATTORNEYS FOR APPLICANT

Claims Appendix

1. An identity preserved container for storage of a flowable cargo, said container comprising:

a frame supporting an enclosure with a top, bottom, side walls, front wall, and a back wall;

a liner secured to an interior of said enclosure, comprising side panels and funnels panels forming a bin terminating in a centrally located opening in said bottom of said enclosure wherein said liner is made of a material resistant to sticking of flowable cargo to preserve the identity of the cargo;

a plurality of support panels reinforcingly secured to the underside of said funnel panels;

and

a belly door located in said opening in said bottom of said enclosure wherein said belly door moves between a closed and an open position.
2. The invention in accordance with claim 1 wherein said liner is made of a non-stick material to promote the flow of the cargo.
3. The invention in accordance with claim 2 wherein said non-stick material is polyboard.
4. The invention in accordance with claim 1 further comprising a releasable sealed hatch in said top of said enclosure to allow for the introduction of the cargo.

5. The invention in accordance with claim 1 wherein said side panels of said liner overlaps said funnel panels of said liner to prevent capture of the cargo between the joint between liner panels.
6. The invention in accordance with claim 1 wherein said side panels of said liner are secured to said interior of said enclosure with fasteners located in periodic recesses in said side panels.
7. The invention in accordance with claim 6 further comprising caps placed over said recesses to prevent retention of the cargo in said recesses.
8. The invention in accordance with claim 1 wherein said belly door is comprised of a first layer of polyboard and a second layer of steel.
9. The invention in accordance with claim 1 wherein said belly door further comprises a rack and spur gear mechanism for moving said belly door between said open and said closed position.
10. The invention in accordance with claim 1 wherein said container is divided into a plurality of compartments, wherein said compartments are divided by a compartment wall.
11. The invention in accordance with claim 1 wherein said container is air-tight.

12. The invention in accordance with claim 1 further comprising cargo and said cargo is grain.
13. The invention in accordance with claim 12 wherein said grain is an identity preserved variety of corn.
14. The invention in accordance with claim 1 wherein said cargo is soybeans.
15. The invention in accordance with claim 1 wherein said cargo is wheat.
16. The invention in accordance with claim 1 wherein said cargo is rice.
17. The invention in accordance with claim 1 wherein said cargo is barley.
18. The invention in accordance with claim 1 wherein said cargo is sorghum.
19. The invention in accordance with claim 1 wherein said container is for storage and transportation of a flowable cargo.
20. The invention in accordance with claim 1 wherein said container is for storage and segregation of a flowable cargo.

21. The invention in accordance with claim 1 wherein said liner is independent of said side walls.
22. The invention in accordance with claim 1 wherein said top is permanent.
23. (Canceled)
24. The invention in accordance with claim 1 wherein a plurality of rails connect to said support panels.
25. The invention in accordance with claim 24 wherein a plurality of posts secure the support panels to the bottom of the enclosure.
26. (Canceled)
27. (Canceled)
28. An identity preserved container for storage of a flowable cargo, said container comprising:

a frame supporting an enclosure with a top, bottom, side walls, front wall, and a back wall; a liner secured to an interior of said enclosure, comprising side panels and funnels panels forming a bin terminating in a centrally located opening in said bottom of said

enclosure wherein said liner is made of a material resistant to sticking of flowable cargo to preserve the identity of the cargo; and
a belly door located in said opening in said bottom of said enclosure wherein said belly door moves between a closed and an open position.

29. An identity preserved container for storage of a flowable cargo, said container comprising:
a frame supporting an enclosure with a top, bottom, side walls, front wall, and a back wall;
a liner secured to an interior of said enclosure, comprising side panels and funnels panels forming a bin terminating in a centrally located opening in said bottom of said enclosure wherein said liner is made of a material resistant to sticking of flowable cargo to preserve the identity of the cargo;
a plurality of support panels reinforcing the underside of said funnel panels; and
a belly door located in said opening in said bottom of said enclosure wherein said belly door moves between a closed and an open position.

Evidence Appendix

There is no evidence submitted herewith.

Related Proceedings Appendix

There are no related proceedings.